may be a party to a hire-purchase agreement and not in possession. Then he could not be said to use it. The same would be the case if a vehicle were taken out without permission of the owner. The only English case I can find on the subject is *Gifford v. Whittaker*[1]. There the question was whether a driver was using a vehicle. That case, does, however, support the proposition that at one time there may be several persons "using" a vehicle in different ways and too restricted a meaning should not be placed on the word.

Reference answered.

ARATHOON SONS LIMITED v. BUAN LEE SENG LIMITED.

[App. Civ. Juris. (Murray-Aynsley, C.J.)
November 24, 1950]

[Singapore — District Court Appeal No. 4 of 1950]

Landlord and tenant — Control of Rent Ordinance, 1947, s. 14(1)(f) — Reasonably required by landlord — Bona fide claim.

This was a claim for possession of certain business premises on the ground that the landlord reasonably required the premises for his own occupation.

Held, that the landlord has to prove that he reasonably requires the premises for his own occupation and that the question of **bona fides** of the claim is always one which the Court must examine carefully in the case of business premises which are usually more valuable when vacant than when let.

APPEAL from the Civil District Court.

F. R. N. H. Massey for the appellants.

R. H. Green for the respondents.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Murray-Aynsley, C.J. : — This appeal arises out of proceedings by the appellants for possession of certain premises not used as a dwelling house.

The appellants based their claim to a judgment for possession on section 14(1)(f) of the Control of Rent Ordinance. The conditions under (ii) of that part of the sub-section have been complied with.

The learned District Judge gave judgment in favour of the respondents on the strength of his finding of fact that the appellants did not reasonably require the premises for their own occupation. To put the matter briefly he found that the claim was not made *bona fide* and that the appellants sought to obtain a judgment for possession in order to extort an extravagant price from the respondents.

As business premises are usually more valuable when vacant than when let, the question of *bona fides* is always one which the Court must examine carefully in cases of this kind.

On this the relevant passage of the judgment is as follows :—

"This brings me to the second question which is, have the plaintiffs proved that they, as owners 'reasonably require the premises for their occupation?' The onus of proving reasonable requirement is on the plaintiffs. It is obvious, I think, that for some considerable time the plaintiffs have wanted possession of these premises. But, in the light of the evidence before me to tell me that they reasonably require the premises for **their own occupation** is to tell me what I do not believe. The plaintiffs say that they require this godown for packing and stacking copra prior to shipment and for salting, preparing, measuring, packing and storing skins before shipment. But, it is admitted that the godown is damp and that the laying out of salted skins would make it more so, and that therefore it would be most inadvisable to store copra there. Furthermore, the plaintiffs have for some time been negotiating with the defendants for the sale of this godown to the defendants, and as recently as October 1949 Mr. Arathoon told Mr. Tan Siak Kew that he would consider a sale 'if the price was correct', a figure of $15/- a square foot having previously been suggested by Mr. Arathoon. This price was far too high for the defendants, being about four times the market value. In face of these facts I am satisfied that the plaintiffs want possession of these premises, not for their own occupation as they would have me believe, but in the hope that they may thereby compel the defendants to purchase the premises at their price. I am satisfied, therefore, that the plaintiffs have not discharged this onus. It follows that the plaintiffs cannot succeed in their claim."

It has to be considered whether on the evidence this finding is justified. It is, it will be seen, an inference based on certain findings of fact. Are the findings of fact or the inference justified?

In the present case the premises are of a peculiar character. They occupy a site in the interior of a block at a considerable distance from a street. They could probably only be used economically by occupiers of adjoining land; adjoining lots are occupied by the appellants and the respondents respectively.

The appellants have been trying to obtain possession of the premises since 1946. In the first proceedings before the Rent Board the application was apparently based on the state of the premises.

The second proceedings took place in 1948 in the District Court. The application was based on (f) and (m) of section 14(1).

They failed on the grounds that the conditions under (i) and (ii) of (f) were not satisfied, and under (m) no alternative accommodation was available. The learned District Judge did, however, find that the appellants needed the premises for their own occupation and he went on to state that he would have found for the appellants on the question of greater hardship under

the proviso. Since then the appellants have obtained certain accommodation and thus their circumstances are changed. These findings of fact made in 1948 are, therefore, of no relevance to the present proceedings.

As I have said, the appellants base their present application on (f). Their allegation that they want the premises for their own purposes is not based on the same grounds as those advanced in 1948.

At present the appellants say that they want the premises for two purposes; the preparation and storage of reptile skins and the package and storage of copra. As regards the latter, it does not appear that the appellants at present deal in copra and one would not think that it would be advisable to store copra in a confined space close to a place where the preparation of reptile skins was carried on.

It does appear that the appellants have been carrying on business in reptile skins but that latterly for lack of space they have not been treating them or storing them. They allege that it would be to their advantage to do so and there is no reason to suppose that this may not be true. There is no evidence that the premises would be in any way unsuitable for the purpose. There is evidence that the premises would be unsuitable for storage of copra.

This has a bearing on the question of *bona fides*. If the evidence showed that no reasonable man would carry on the intended business in those premises it would be of very great weight indeed. I think that the learned District Judge went further than the evidence warranted in so far as he based his finding of lack of *bona fides* on this ground.

The other ground on which, in particular, the learned District Judge based his finding arises out of certain discussions between agents of the parties about the possible sale of the premises. People go into business to make money and there comes a point at which any reasonable man would sell his property or his business. I think that on this matter also the learned District Court Judge went further than the evidence warranted.

The position is this. The appellants have to prove that they reasonably require the premises for their own purposes. The learned Judge has found against them on certain grounds. I do not think that the facts justify the inference he has drawn. There is no finding on the question of greater hardship. I am not prepared to substitute a finding of fact to the effect that the appellants have discharged the burden of proof nor on the question of greater hardship. There must be a new trial.

Re-trial ordered.